

Noelle E. Dwarzski, WSBA No. 40041  
BARLOW COUGHRAN  
MORALES & JOSEPHSON, P.S.  
1325 Fourth Ave Suite 910  
Seattle, WA 98101  
Telephone: (206) 224-9900  
Facsimile: (206) 224-9820  
E-mail: noelled@bcmjlaw.com

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOARDS OF TRUSTEES OF THE  
CEMENT MASONS & PLASTERERS  
HEALTH & WELFARE TRUST,  
CEMENT MASONS AND PLASTERERS  
RETIREMENT TRUST, and WESTERN  
WASHINGTON CEMENT MASONS  
JOURNEYMAN AND APPRENTICE  
TRAINING TRUST,

Plaintiffs,

v.

RICHARD TRUMBULL CONSTRUCTION  
LLC, A Washington limited liability  
company, Contractor's License No.  
RICHATC866D4, UBI No. 603385424,

Defendant.

NO.

**COMPLAINT TO ENFORCE AUDIT  
REQUEST AND FOR DELINQUENT  
FRINGE BENEFIT CONTRIBUTIONS  
(ERISA)**

For their complaint, plaintiffs allege as follows:

**I. PARTIES AND JURISDICTION**

COMPLAINT FOR DELINQUENT  
FRINGE BENEFIT CONTRIBUTIONS - 1

5000 392 vb051205

BARLOW COUGHRAN  
MORALES & JOSEPHSON, P.S.  
1325 FOURTH AVE., SUITE 910  
SEATTLE, WA 98101  
(206) 224-9900

1           1.       Plaintiffs are the Boards of Trustees of the Cement Masons & Plasterers Health  
2       & Welfare Trust, Cement Masons and Plasterers Retirement Trust, and Western Washington  
3       Cement Masons Journeyman and Apprentice Training Trust (collectively “Trust Funds”).

4           2.       The Trust Funds are joint labor-management funds created pursuant to Section  
5       302(c) of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 186(c), and the  
6       Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001, *et seq.* as amended  
7       (“ERISA”).

8           3.       Defendant Richard Trumbull Construction LLC (hereafter “Richard  
9       Trumbull”), is a Washington corporation engaged in business in the State of Washington  
10      having its principal offices listed as 3801 56<sup>th</sup> Street Court East, Tacoma, WA 98443 with the  
11      Secretary of State.

12          4.       Jurisdiction is conferred on this court by Sections 502 and 515 of ERISA, 29  
13      U.S.C. §§ 1132 and 1145.

14          5.       Venue is appropriate in the Division of Seattle, King County, WA under  
15      ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

16               **II.       FIRST CLAIM FOR RELIEF: DELINQUENT CONTRIBUTIONS**

17          6.       At all material times, Richard Trumbull has been signatory to a collective  
18      bargaining agreement (“CBA”) with Operative Plasterers’ and Cement Masons’ International  
19      Association, Cement Masons’ Local 528 (hereafter referred to as “Local 528”), which  
20      incorporates by reference the Trust Agreements for the Trust Funds.

21          7.       Mr. Richard Trumbull, the owner of Richard Trumbull Construction LLC, was  
22      authorized to legally bind and sign contracts on behalf of Richard Trumbull Construction LLC

1 and signed the Compliance Agreement with Local 528 on June 11, 2018.

2 8. The CBA and Trust Agreements require Richard Trumbull to make employee  
3 benefit contributions to Trust Funds on behalf of Richard Trumbull's employees working  
4 within with the jurisdiction of the CBA.

5 9. At all material times, Richard Trumbull has employed employees for whom  
6 employee benefit contributions are due pursuant to the terms of the CBA and Trust  
7 Agreements.

8 10. Richard Trumbull has failed to timely make employee benefit contributions to  
9 the Trust Funds beginning from July 2019.

10 11. Richard Trumbull owes \$16,855.65 in employee benefit contributions for the  
11 delinquent months of October and November 2019 and January 2020.

12 12. Richard Trumbull owes an unknown amount of contributions to the Trust  
13 Funds for February 2020 through current. The total amount shall be proved on motions or at  
14 trial.

15 13. Under the terms of the Trust Agreements and CBA, and under federal statutory  
16 law, Richard Trumbull is obligated to pay liquidated damages, interest, reasonable attorney's  
17 fees, and costs and expenses of suit.

18 14. Richard Trumbull owes \$5,658.79 in liquidated damages, \$2,411.83 in interest  
19 (calculated through May 26, 2020), and \$700 in referral attorney fees for the delinquent  
20 period of July 2019 through January 2020.

21 15. Richard Trumbull owes an unknown amount in liquidated damages, interest,  
22 attorney's fees and costs for February 2020 through current. The total amount shall be proved

1 on motions or at trial.

2 16. As required by RCW 18.27.040 and concurrent with this complaint, the Trust  
3 Funds have filed an action in King County Superior Court (Cause No. 20-2-09267-3 SEA), to  
4 collect the amounts owed by Richard Trumbull from its contractor's bond.

5 **III. SECOND CLAIM FOR RELIEF: DEMAND FOR AUDIT OF**  
6 **PAYROLL RECORDS**

7 17. Plaintiff Trust Funds re-allege the facts set forth in paragraphs 1 through 15  
8 above as if stated fully herein, and further allege as follows:

9 18. The Trust Agreements authorize the Trust Funds to audit contributing  
10 employers, such as Richard Trumbull, books and records.

11 19. The Trust Funds have requested documents and payroll records necessary to  
12 complete an audit of Richard Trumbull's books and records for the period of December 2018  
13 through the present date.

14 20. As of the date of this Complaint, Richard Trumbull has refused to provide the  
15 documents and payroll records necessary to complete an audit of its books and records for the  
16 period of December 2018 through the present date.

17 21. ERISA permits a fiduciary to bring suit to bring redress violations of the Trust  
18 Agreement or enforce provisions of the Trust Agreement. ERISA § 502(a)(3), 29 U.S.C.  
19 § 1132(a)(3).

20 22. Pursuant to ERISA and the Trust Agreements, the Trust Funds are entitled to  
21 an award from this court ordering Richard Trumbull to turn over the documents and payroll  
22 records necessary to complete an audit of its books and records and otherwise comply with

1 the payroll audit provision of the Trust Agreements.

2 WHEREFORE, Plaintiff Trust Funds pray for a money judgment as follows:

- 3 A. For an order requiring Richard Trumbull Construction to submit to an audit  
4 and provide all the documents and payroll records necessary to complete an  
5 audit of its books and records through the present date;
- 6 B. Judgment against Richard Trumbull Construction for all outstanding  
7 contributions, liquidated damages, interest, found to be due and owing for the  
8 period of December 2018 through current;
- 9 C. Judgment against Richard Trumbull Construction for an amount no less than  
10 \$5,658.79 in liquidated damages, \$2,411.83 in interest, and \$700 in referral  
11 attorney fees for the delinquent period of July 2019 through January 2020;
- 12 D. For reasonable attorneys' fees costs and expenses of suit; and
- 13 E. For such other and further relief as this court deems just and equitable.

14 DATED THIS 26<sup>th</sup> day of May, 2020.

15 s/ Noelle E. Dwarzski

16 Noelle E. Dwarzski, WSBA # 40041  
17 BARLOW COUGHRAN  
18 MORALES & JOSEPHSON, P.S.  
19 Attorneys for Plaintiff Trusts  
20 1325 Fourth Ave., Suite 910  
21 Seattle, WA 98101  
22